

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

RANDALL W. DENNIS

PLAINTIFF

V.

CIVIL ACTION NO. 4:09CV30 HTW-LRA

**MICHAEL J. ASTRUE
COMMISSIONER OF SOCIAL SECURITY**

DEFENDANT

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on Plaintiff's Motion for Attorneys Fees Under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (d)(1)(A). This case was remanded to the Commissioner of the Social Security Administration for further consideration of the medical evidence on September 28, 2010. Plaintiff now applies for an award of attorneys' fees in the amount of \$6,345.13. The undersigned recommends that the motion be granted for the reasons that follow.

Under EAJA, a federal court shall award reasonable attorney's fees and costs to a prevailing party in a civil action brought against the United States unless the court finds that the position of the government was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412 (d)(1)(A). A party who obtains a remand of a social security appeal qualifies as a prevailing party under EAJA. The government bears the burden of showing that its position was substantially justified or that special circumstances make an award unjust.

In support of his EAJA application, Plaintiff submits itemized lists of services rendered by Attorneys Rick Clark and Elizabeth Dunlap totaling 37.50 hours. Plaintiff requests that the EAJA statutory rate of \$125.00 per hour be adjusted for increases in the cost of living, making the total fee for services \$6,345.13. The Commissioner does not oppose Plaintiff's application for the requested amount so long as the fees are subject to offset any pre-existing debt Plaintiff may owe to the government. *Astrue v. Ratliff*, 130 S.Ct. 2521 (2010).

The undersigned has reviewed Plaintiff's application and the supporting exhibits, and finds the motion should be granted.

Conclusion

For the reasons stated, the undersigned United States Magistrate Judge recommends that Plaintiff's unopposed motion for attorneys' fees be granted in the amount of \$6,345.13.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636, Fed. R. Civ. P. 72(b) (as amended, effective December 1, 2009).

THIS the 2nd day of August 2011.

S/Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE